

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

JUAN GABRIEL ALVAREZ,  
Petitioner,  
v.  
PAUL THOMPSON,  
Respondent.

No. 2:21-cv-1777-TLN-CKD

FINDINGS AND RECOMMENDATIONS

Petitioner, a federal prisoner proceeding pro se, has filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241.<sup>1</sup> On October 28, 2021, the court ordered respondent to file a response to the petition within 60 days. ECF No. 5. Respondent filed a motion to dismiss the § 2241 petition on December 19, 2021. ECF No. 8. Petitioner filed a reply which the court construes as an opposition to the motion to dismiss. ECF No. 9. For the reasons explained below, the undersigned recommends granting respondent's motion to dismiss based on lack of ripeness.

**I. Factual and Procedural History**

Petitioner is serving a total term of 216 months of incarceration followed by 60 months of supervised release following his plea of guilty in two separate methamphetamine-related cases

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<sup>1</sup> Petitioner paid the \$5.00 filing fee for this action.

1 filed in this court in 2008 and 2012. See United States v. Aguilar-Godinez, et al., Case No. 2:08-  
 2 cr-00570-GEB (E.D. Cal.); United States v. Alvarez, et al., Case No. 2:12-cr-00188-TLN (E.D.  
 3 Cal.); see also ECF No. 8-1 (docket sheets).

4 Petitioner, who is presently confined at FCI-Herlong, filed a habeas corpus petition  
 5 pursuant to 28 U.S.C. § 2241 on September 25, 2021.<sup>2</sup> ECF No. 1. In his habeas application,  
 6 petitioner seeks a declaratory judgment that he is entitled to earned time credits (“ETCs”)  
 7 pursuant to the First Step Act of 2018 (“FSA”). ECF No. 1 at 1. Specifically, petitioner  
 8 calculates that he is entitled to earned time credits resulting in an early release date of May 6,  
 9 2023. ECF No. 1 at 1. Absent these earned time credits, petitioner’s expected release date is  
 10 August 15, 2027. ECF No. 1 at 7.

11 Respondent moves to dismiss the petition based on lack of Article III standing and  
 12 ripeness, lack of jurisdiction, petitioner’s failure to exhaust his administrative remedies, and  
 13 because there is no statutory authority to compel the Bureau of Prisons to perform a discretionary  
 14 act. ECF No. 8. First and foremost, respondent submits that there is no “case or controversy” for  
 15 the court to adjudicate because “neither [p]etitioner’s custodial status nor custody term has been  
 16 impacted by any BOP action.” ECF No. 8 at 5. Accordingly, petitioner’s § 2241 application is  
 17 nothing more than an abstract disagreement which petitioner does not have standing to challenge.

18 In support of the motion to dismiss, respondent submitted a declaration from Christopher  
 19 Liwag, a Senior Correctional Programs Specialist with the Bureau of Prisons, who reviewed  
 20 petitioner’s inmate records. ECF No. 8-2. Mr. Liwag describes the three-level administrative  
 21 review process available to federal inmates challenging BOP actions, and indicates that petitioner  
 22 has not exhausted his administrative remedies related to earned time credits under the First Step  
 23 Act. ECF No. 8-2 at 3. Mr. Liwag describes the specific provisions of the First Step Act related  
 24 to earned time credits for participation in Evidence Based Recidivism Reduction Programs  
 25 (“EBRRs”) and Productive Activities (“PAs”). ECF No. 8-2 at 3-11. Petitioner has been  
 26 determined eligible for earned time credits under the FSA. ECF No. 8-2 at 11. However,

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27 <sup>2</sup> The filing date has been calculated using the prison mailbox rule. See Houston v. Lack, 487  
 28 U.S. 266 (1988).

1 “[b]ecause BOP has not completed its phase-in, the precise calculations for [p]etitioner and  
2 amount of credits he can apply, as well as their precise application, are speculative.” ECF No. 8-  
3 2 at 11.

4 Petitioner filed a reply to the motion to dismiss asking the court to “order[] declaratory  
5 relief [by] instructing DOJ-BOP that some education courses and prison work at Herlong must  
6 qualify for FSA early release credit.” ECF No. 9 at 2.

## 7 **II. Legal Standards**

### 8 **A. Section 2241 Relief**

9 Federal inmates have two avenues for pursuing habeas corpus relief. First, a challenge to  
10 a federal prisoner’s conviction or sentence can be raised via a motion to vacate, set aside, or  
11 correct the sentence pursuant to 28 U.S.C. § 2255. Section 2255 motions are filed in the judicial  
12 district where the conviction occurred. Alternatively, a federal inmate challenging the manner,  
13 location, or conditions involved in the execution of their sentence, may file a habeas corpus  
14 petition pursuant to 28 U.S.C. § 2241. Hernandez v. Campbell, 204 F.3d 861, 864 (9th Cir.  
15 2000). Jurisdiction over a § 2241 petition lies in the district of the prisoner’s confinement.

### 16 **B. First Step Act**

17 The First Step Act of 2018 (“FSA”) made several important changes to the duration of  
18 federal prison sentences. See Pub. L. No. 115-391, 132 Stat. 5194. As relevant to the pending  
19 habeas petition, it created an evidence-based recidivism reduction program that incentivizes  
20 inmates to participate in and complete programs and productive activities by awarding them, inter  
21 alia, “10 days of time credits...” and “an additional 5 days of time credits for every 30 days of  
22 successful participation” if the prisoner is classified as a minimum or low risk of recidivism. 18  
23 U.S.C. § 3632(d)(4). In order to apply these earned time credits, the BOP was first required to  
24 develop a risk and needs assessment system within 210 days after enactment of the FSA. 18  
25 U.S.C. § 3632(a). By January 15, 2020, the BOP was required to conduct an initial intake risk  
26 and needs assessment for each prisoner and “begin to assign prisoners to appropriate evidence-  
27 based recidivism reduction programs based on that determination.” 18 U.S.C. 3621(h). The FSA  
28 also created a phase-in period of up to 2 years following the initial risk and needs assessment for

the BOP to “provide such evidence-based recidivism reduction programs and productive activities for all prisoners.” 18 U.S.C. § 3621(h)(2). “During the 2-year period..., the priority for such programs and activities shall be accorded based on a prisoner’s proximity to release date.” 18 U.S.C. § 3621(h)(3). Thus, by January 15, 2022, the BOP was required to provide the necessary recidivism reduction programs and productive activities for all prisoners to earn additional time credits to reduce their sentences under the FSA if they meet the other relevant criteria. The BOP implemented its final agency rules regarding the earning and awarding of ETC’s under the First Step Act on January 19, 2022. See 87 Fed. Reg. 2,705-01, 2022 WL 159155 (F.R.) (codified at 28 C.F.R. §§ 523.40-523.44) (explaining that “[t]he final rule adopts a more straightforward and more administratively manageable approach that is consistent with the FSA’s goal...” by awarding ten days of FSA time credits “[f]or every thirty-day period that an eligible inmate successfully participates in EBRR Programs or PAs....”).

### III. Analysis

Against this federal statutory backdrop, the court turns to the specific issues raised in respondent’s motion to dismiss. According to Article III of the United States Constitution, federal courts have jurisdiction over “cases” and “controversies.” As a threshold jurisdictional matter, parties are required to have an actual controversy that “make[s] resolution of the controverted issue a practical necessity.” See Poe v. Ullman, 367 U.S. 497, 502-05 (1961). This requirement of ripeness serves “to prevent the courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements over administrative policies, and also to protect the agencies from judicial interference until an administrative decision has been formalized and its effects felt in a concrete way by the challenging parties.” Abbott Laboratories v. Gardner, 387 U.S. 136, 148-49 (1967), abrogated on other grounds by Califano v. Sanders, 430 U.S. 99 (1977). A claim is not yet ripe for judicial review “if it involves contingent future events that may not occur as anticipated, or indeed may not occur at all.” United States v. Streich, 560 F.3d 926, 931 (9th Cir. 2009) (quoting Thomas v. Union Carbide Agr. Prods. Co., 473 U.S. 568, 580-81 (1985)).

In this case, the BOP has not yet calculated petitioner’s ETCs because his release date is

1 too far in the future and the agency has chosen to calculate FSA sentencing credits on a rolling  
2 basis with those with earlier expected release dates given first priority. See 87 Fed. Reg. 2,705-  
3 01, 2022 WL 159155 (F.R.) (explaining that a “phased-in approach is appropriate and warranted,  
4 given that the FSA has been the most impactful congressional action taken concerning the Bureau  
5 of Prisons in recent years, requiring major changes to existing systems and processes, the  
6 development of new systems, and changes that apply to approximately 130,000 current  
7 inmates.”). The FSA mandated giving prisoners with impending release dates priority in  
8 participating in the programs and activities to earn these time credits, and, at this juncture, the  
9 court has no way of knowing exactly how the BOP will actually calculate petitioner’s earned time  
10 credits. Petitioner is essentially seeking an advisory opinion from this court, although he phrases  
11 it in the form of a request for a “declaratory judgment.” ECF No. 1 at 1; see e.g., Flast v. Cohen,  
12 392 U.S. 83, 96 (1968) (emphasizing that “it is quite clear that ‘the oldest and most consistent  
13 thread in the federal law of justiciability is that the federal courts will not give advisory  
14 opinions.’”) (internal citation omitted). The issue before the court is merely an abstract  
15 disagreement between the parties. As a result, this case is not ripe for adjudication because it  
16 hinges “upon contingent future events that may not occur as anticipated....” Streich, 560 F.3d at  
17 931. The undersigned therefore recommends granting respondent’s motion to dismiss the  
18 pending § 2241 petition based on lack of ripeness. In light of this recommendation and in the  
19 interests of judicial economy, the undersigned finds it unnecessary to address the remaining  
20 grounds raised in respondents’ motion to dismiss.

#### 21 **IV. Plain Language Summary for Pro Se Party**

22 The following information is meant to explain this order in plain English and is not  
23 intended as legal advice.

24 After reviewing the provisions of the First Step Act, the undersigned has concluded that  
25 there is no specific case or controversy that you are challenging. This court cannot simply issue a  
26 declaratory judgment, as you request, without any pending dispute between the parties. The  
27 undersigned recommends granting respondent’s motion to dismiss your § 2241 petition.

28 If you disagree with this recommendation, you have 14 days to explain why it is not the

correct result. Label your explanation “Objections to Magistrate Judge’s Findings and Recommendations.” The district court judge assigned to your case will review the matter and issue a final decision.

Accordingly, IT IS HEREBY RECOMMENDED that:

1. Respondent’s motion to dismiss (ECF No. 8) be granted.
2. Petitioner’s application for a writ of habeas corpus pursuant to 28 U.S.C. § 2241 be dismissed without prejudice based on lack of ripeness.

These findings and recommendations are submitted to the United States District Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days after being served with these findings and recommendations, any party may file written objections with the court and serve a copy on all parties. Such a document should be captioned “Objections to Magistrate Judge’s Findings and Recommendations.” The parties are advised that failure to file objections within the specified time may waive the right to appeal the District Court’s order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

Dated: April 22, 2022

  
CAROLYN K. DELANEY  
UNITED STATES MAGISTRATE JUDGE